



THE JUDICIARY OF TANZANIA  
IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA  
(CORAM: HON. AUGUSTINE RWIZILE)

LABOUR REVISION NO. 6 OF 2023

THE REGISTERED TRUSTEES OF GOMBE SCHOOL OF ENVIRONMENT SOCIETY (GOSESO TRUST) ..... COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

HUSEIN IDD AND TWO OTHERS ..... RESPONDENT / DEFENDANT

JUDGMENT

**Fly Notes**

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**Facts**

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**Ratio Decidendi**

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14th of June 2024

**Hon. RWIZILE.:**

In between July 2015 to October 2016, differently, the respondents were employed by the applicants as teachers. In June 2020, based on CMAF1, dated 24th June 2020, the respondent filed a joint application for breach of contract, claiming for salary arrears for 10 months between September 2019 to June 2020. After a period of adjournments, on 16th July 2021, in Labour Dispute No. CMA/KIG/185/2020/05, the Commission for Mediation and arbitration for Kigoma (CMA), heard the application *ex parte* following the uncalled-for absence of the respondents and their advocate Mr. Ignas Kagashe. Later, on 6th September 2021 an *ex parte* judgment was entered in favour of the respondents. The appellants were ordered to pay them in total, a sum of TZS 33,000,000.00. The applicants were aggrieved by the award, filed an application to set it aside before the same commission. On 28th February 2022, their application was found unmerited and therefore dismissed. Not satisfied with the dismissal, they have now applied to this court to revise the decision of the Commission.

Grounds for this application were advanced under para 13 of the affidavit supporting it. Mr. Ignas Kagashe learned counsel for the applicants however, argued only three of five grounds as hereunder;

1. *That the commission erred in law and in fact in injudiciously dismissing the application as having no merits*



2. *Whether the mandatory provisions of the rule 19 of the Labour Institutions (Mediation and Arbitration) Rules GN. 64 of 2007 was complied with as held by the Commission.*
3. *Whether the applicants and their representative were informed of the date of the exparte award*

In his oral argument supporting the first point, Mr. Kagashe submitted that the commission ought to find that there was sufficient cause and so set aside its exparte award. He argued, the hearing was set on 16.07.2021, he went to the commission representing the applicants but was late and found the commission at the hearing. It was his story that he told the Commission that the advocate for the respondents had deceived him that he would also be late as stated in para 5,6 and 7 of the affidavit. According to Mr. Kagashe, he asked the commission to listen to him, but it did not, and it had not even finished hearing the first witness. He said, the counter affidavit of the respondent, supports this application. It was his view that the CMA ought to have heard him but did not.

His second argument was pegged on Rule 19 of GN 64/2007. The learned counsel was of the view that the rule requires a notice of the date of hearing to be given 14 days before the hearing, save if the parties had agreed otherwise and informed the commission. According to him, the summons was served on applicants a day before a hearing date, and because there was a dispute on that aspect, the Commission ought to resolve it by an affidavit of the said Damas.

It was Mr. Kagashe's contention that the Commission on the third ground, did not follow the decision of the court, in the case of **Cosmas Construction Co. Ltd vs Arrow Garments LTD**, [1992] TLR 127, where it was held that when the case is heard exparte, the absent party should be notified of the date of the judgement. Failure to do that, renders the exparte decree a nullity. According to the learned counsel, there was no justification that the clerk of the Commission informed him of the date of the award.

Lastly, he said the rest of the grounds in the affidavit should be accorded weight they deserve. He prayed; the application be granted.

When contesting the application, Mr. Damas Sogomba advocate for the respondent submitted that, on 15.07.2021, the commission issued the summons for the last adjournment. The application was fixed for hearing on 16th July 2021 at 1000hrs. Mr. Sogomba said, he went to the advocate's office but could not get there because there were road construction activities around. Mr. Kagashe was called on phone and sent one of his workers called Pius. He received the summons which was taken to Mr. Kagashe, signed it and returned it to him. Mr. Sogomba returned the same to the CMA. On the hearing date, he said, he went to the CMA, at the time the matter was scheduled for hearing. The applicants and their advocate did not appear, even after some minutes of waiting. Upon his coming, he found the hearing done and the award date fixed.

The award has acknowledged, the learned counsel added, it was difficult to him to get an affidavit supporting his allegation through Kagashe's servant. The record shows, he said, the advocate came at 10.45 am. He denied having communication with him whatsoever in respect of the time and delay as he alleged. The time was fixed, and it was the last adjournment, he stated

On the application of rule 19, the learned counsel held the view that, this point was not party of his complaint at the CMA. The CMA, according to him, was taking into consideration the nature of the case and the parties. He said, it



is no true that he misled the CMA. According to him, the summons was duly issued. He argued further that the case cited by the applicants is irrelevant in the circumstances. There was information to him and when the judgement date was fixed, he was present and knew the date. Lastly, the learned advocate urged this court to consider the counter affidavit. He prayed; the application be dismissed.

Mr. Kagashe given a chance to re-join, argued that it is no true that he went for an adjournment, the case was heard. He said, he went for a hearing and found the case going on. It is not, he added, three witnesses could not have testified in 30 minutes. According to him, the proceedings are clear and will speak for his case. Lastly, he asked this court to grant the application.

Having heard the submissions of the parties. I have to say, on the first ground, the record does not support the application. I think, for that point to hold, the applicants ought to refer to the proceedings of the commission as part of evidence. The record has it that, the application was called for hearing on 16th July 2021 at 10:00hrs, where in the absence of the applicants and their advocate, it was heard *ex parte* under Regulation 28(1)(b) of GN. 67 of 2007. On that day, two witnesses were heard, and it was adjourned to 29th July.

There is no dispute according to IR1 annexed to the affidavit supporting the application, Mr. Kagashe arrived at the tribunal on same date at 10:45 am. According to his submission, he found the Commission hearing the case, but was not given audience to address it on the cheating ordeal by Mr. Sogomba. It is on record that on 29th July, when the matter was called Mr. Kagashe was present but Mr. Sogomba had obtained leave of absence. It was therefore adjourned to 6th August at 11.00am. Come this date, neither the applicants nor their advocate Mr. Kagashe that appeared. The case proceeded with the third witness and closed the respondents' case. The award was scheduled on 06th September 2021 at 1200hrs, and it was delivered.

To deal with the first ground, it is indeed not shown in the proceedings that he was recorded and there may be some truth that Mr. Kagashe appeared at the tribunal on 16th July. But the record is silent. IR1 as attached to the affidavit supporting this application clearly shows, he arrived at the tribunal forty-five minutes past ten. It was recorded in the impugned ruling that the Commission waited for 20 minutes (page 8). That means the proceedings started at 10:20. Despite this not being reflected in the record of the tribunal, still, it wouldn't be possible for the tribunal to hear two witnesses in 20 minutes. I therefore tend to agree with Mr. Kagashe that the Commission erred not take down his complaint on what was the cause of his failure to attend the proceedings in time. Therefore, I find merit in this argument.

The second point is whether the requirement of the notice under Rule 19 of GN 64/2007 was complied with. The rule requires a notice of 14 days for the hearing unless parties agree otherwise. It is clear from the records that the applicant went to the tribunal a day after receiving the notice. It is on that day; he found the proceedings either on or had completed. His conduct before shows, he sat on the rights of the parties, because he did not resist or say, the notice was too short. It is clear from his submission that he agreed with Mr. Sogomba for a hearing date but adjusted time to start. I do not find merit in this point.

The above determination leads me to failure to issue the notice of judgement/award on the stated date as held in the case of **Cosmas Construction Co. Ltd vs Arrow Garments LTD** (*supra*). It is true that the notice was not issued. As to whether the notice was relevant, the proceedings had it that, on 29th July, Mr. Kagashe was present, and the



case was fixed for hearing on another date which he did not, without any reasonable cause appear. It is from this day that the award was scheduled and then delivered.

From the proceedings, there was no need for a notice of the judgement. I am saying so because, if he had been serious with the proceedings why did he absent himself to attend a hearing that followed. The case of **Cosmas Construction Co. Ltd** (supra) supports the proposition, where a case is heard *ex parte* without appearing in court after an *ex parte* order has been made. In this case, that was not the case. Mr. Kagashe and the applicants were aware of what was going on, but adamantly absented themselves. I do not find fault in the decision of the Commission. For the foregoing reasons, I dismiss the appeal with no order as to costs.

Dated at **KIGOMA ZONE** this 14th of June 2024.



**AUGUSTINE RWIZILE**  
**JUDGE OF THE HIGH COURT**

